IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION No.2958 of 2007

Krishna Devrao Thathe and Anr ..Applicants.

Vs.

The State of Maharashtra ..Respondent.

Mr M. S. Karnik, Advocate for the applicants.

Ms S. D. Shinde, APP for the State.

CORAM: V.C. DAGA,J.
DATED 10.10.2007.

P.C.:-

1. Heard learned counsel for the applicants and learned A.P.P.for the State.

2. Perused application and the material available on record.

3. The applicants, arrested on 29.4.2007 in C.R. No.48 of 2007 registered with Ozar Police Station, for the offence under Sections 302, 307 read with Section 34 of the I.P.C.have moved this application for bail under Section 439 of the Cr.P.C.

4. According to the prosecution, on 28.4.2007 at about 00:15 to 00:30 a.m. the complainant Arjun Jadhav and his brother Mangesh Jadhav after attending marriage

function of one Ravindra Shinde, were proceeding to their home on their motor cycle. At that time, the applicants alongwith their friends, assaulted Mangesh Jadhav and the complainant during which incident Mangesh succumbed to the injuries sustained by him. That is how, the F.I.R. came to be lodged against the applicants and the other co-accused.

5. During the course of investigation, accused Nos. 1 and 2 were interrogated in which name of one Sanjay Solse (accused No.3) surfaced. As such attempts were made to locate him. He was found alongwith the present accused applicants (accused Nos. 4 and 5). On being questioned, they could not give proper answers, therefore, they were arrested on suspicion. Thereafter, on 27.6.2007 (i.e. practically after two months) supplementary statement of Arjun Jadhav, the brother of the deceased, came to be recorded, who implicated the present applicants.

6. Arjun Ramchandra Jadhav, the brother of the deceased, having suffered some injuries in his jaw, was admitted in the hospital. He remained in the hospital for five days. Thereafter, he was discharged. He took

treatment for about one month as outdoor patient. During this period, no statement was given by him. His statement ultimately came to be recorded on 24.7.2007. The delay in recording statement has not been explained.

7. The submissions of the applicants are that at the time of arrest, there was no prima facie material with the Investigating Officer to believe that the present applicants could be part of group committing offence alleged against them.

8. Under the above circumstances, the case of the present applicants cannot be compared with that of accused Nos. 1, 2 and 3. The case of the present applicants (accused Nos. 4 and 5) will have to be considered on different footing.

9. In the above view of the matter, the submission that the applicants were arrested first and thereafter supplementary statement of brother of the deceased was recorded to implicate them needs serious consideration while considering this application.

10. The last submission is that on the date of arrest, there was no material with the

Investigating Officer against the present applicants. Consequently, there is no point in keeping the applicants-accused in jail any further. The possibility of jumping bail is remote.

11. The above submissions were opposed by learned A.P.P.

12. Having heard rival submissions, I am of the opinion that the applicants would be entitled for bail. In the result,they be enlarged on bail in the sum of Rs.25,000/- each with one surety each on following terms and conditions.

a] The applicants shall report to the concerned Police Station twice in a week i.e. on every Monday and Friday between 3.00 to 5.00 p.m.till the conclusion of the trial.

b] The applicants shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

c] The applicants shall co-operate with

the learned Trial Judge for expeditious disposal of the case. Any attempt by them to delay the trial may be a ground for cancellation of bail.

d] It is needless to mention that breach of any of these conditions by the applicants shall result in cancellation of this bail.

e] Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

13. Application is disposed of in above terms.

(V.C. DAGA,J.)